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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 797

LENA S. TILLMAN, Administratrix of the Estate of James A. Tillman, Deceased, 78-05 64th Street, Glendale 27, New York,

Petitioner,

vs.

UNITED STATES OF AMERICA, Office of the Solicitor General of the United States Department of Justice, Washington 25, D. C.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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No. .....

LENA S. TILLMAN, Administratrix of the Estate of James A. Tillman, Deceased, 78-05 64th Street, Glendale 27, New York,

Petitioner,

vs.

UNITED STATES OF AMERICA, Office of the Solicitor General of the United States, Department of Justice, Washington 25, D. C.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, Lena S. Tillman, Administratrix of the Estate of James A. Tillman, deceased, respectfully requests that a writ of certiorari issue to review the order dismissing the petition of the plaintiff (petitioner here).

Opinions Below

The opinion of the Court of Claims has not been officially reported but is printed in the appendix herein (App. pp. 40-47).

Jurisdiction

The order of the Court of Claims dismissing the petitioner's claim on motion of the respondent was entered on July 12, 1963 and reconsideration denied on October 11, 1963. The time of the petitioner to file her application for a writ of certiorari was extended by an order of January 6, 1964 of Hon. Earl Warren, Chief Justice of this Court, to February 8, 1964. The jurisdiction of this Court is invoked by 28 U. S. C., Sections 1255 and 2101. Section 28 U. S. C. 2403 may be applicable.

Jurisdictional cases are set forth in Point VI, *infra*, at pages 37-38.

Questions Presented

This case presents important questions of constitutional and Federal law which have not, but should be, settled by this Court.

1. Whether the President by an executive agreement may nullify judgments *in rem* and judicial liens granted by American courts in favor of American citizens against property in the United States of the citizens of contracting foreign power. The Court of Claims in denying petitioner's claim answered this question affirmatively, in direct conflict with decisions of this Court and several decisions of the U. S. Circuit Court of Appeals (see brief, *infra*, at pp. 14-16).

2. If the preceding question is answered in the negative, then was taking by the Treasury Department of the funds of the Russo-Asiatic Bank in New York burdened with liens in petitioner's favor and distributing these funds to private citizens with claims against the Soviet Government without any compensation to the petitioner, a violation of Fifth Amendment to the Constitution.

3. Can Congress confer power on an administrative agency to compel in its consideration and enforcement of a judgment made by an American court in favor of a citizen to demand splitting of such judgment into separate original causes of action in the face of the constitutional provisions requiring full faith and credit to such judgments (Article IV). The Court of Claims answered this question affirmatively in conflict with decisions of this Court interpreting the meaning of said Article of the Constitution (see brief, *infra*, at pp. 32-33).

4. Can Congress deprive a citizen from recourse to federal courts for violations of the constitutional safeguards for person and property by relegating the determination of citizen's claims to an administrative agency, the decisions of which are not subject to review by any court. The Court of Claims answered this question affirmatively in direct conflict with many decisions of this Court to the contrary (see brief, *infra*, at pp. 28-31).

5. Can Congress deny the right to interpret treaties and international agreements expressly conferred on the federal courts by Constitution, Article III, Section 2, paragraph 1 by forbidding the review of administrative interpretation thereof by such courts. The Court of Claims answered in the affirmative, although the Roosevelt-Litvinov agreement expressly excepted from its operation all judgments of American courts, including that of the petitioner, the Soviet Government waiving all rights thereto, and therefore, unable to pass any rights to such judgments and funds covered by them to the United States Government, and this Court expressly held that our Government has only such rights in the Russian property in the United States, as the Soviet Government had at the time of the assignment (see brief, *infra*, pp. 15-17, 31-32).

6. Does section 314 of the International Claims Settlement Act of 1949, as amended (22 U. S. C., sec. 1641m),

providing that "The action of the Commission in *allowing or denying* any claim under this title shall be final and conclusive on all the questions of law and fact and not subject to review by any other official of the United States or by any Court by mandamus or otherwise * * *" preclude the consideration by the Court of Claims of a claim by the petitioner for taking of her property by the Treasury Department (liens created under New York judgment *in rem*), dismissed for her refusal to supply the Commission with further information as to the causes of action underlying her said judgment, which claim the Commission never considered or denied on the merits. The Court of Claims answered this question in the affirmative, contrary to many decisions of this Court and of several United States Courts of Appeals (see brief, *infra*, pp. 34-36).

Statement

1. James A. Tillman, an American citizen and a resident of New York, brought suit in the Supreme Court of the State of New York against the Russo-Asiatic Bank, a Russian corporation, to recover $188,408.00, and on August 22, 1927 procured a warrant of attachment in that amount from that Court, and on August 24, 1927 levied under it against the Guaranty Trust Company and the National City Bank of New York, which at that time were indebted to said Russo-Asiatic Bank in a sum in excess of $4,000,000 (Petition, pars. 1-4).

2. After much litigation in the State and Federal courts, where the action was removed, Tillman finally recovered, on remand, in the Supreme Court of New York, judgment against Russo-Asiatic Bank on September 23, 1935, for $210,675.05 (Petition, pars. 5-6). The claim of the petitioner with interest to date is close to $450,000.

3. The opinion of the Court of Claims describes two causes of action in the complaint filed in the New York Supreme Court. The opinion omits the third cause of action based on the money order for 100,000 *dollars* unpaid by the Russo-Asiatic Bank. However, the Foreign Claims Settlement Commission expressly allowed claims based on the failure of former private banks in Russia to meet their obligations despite subsequent nationalization by the Soviet Government (Claim of Tanglefoot Company, SOV-41795, Decision SOV-2935 in the Tenth Report to the Congress, 1959 at p. 223). The Commission further made awards on the basis of substantial value of the *ruble* in dollars at the time of the Soviet nationalization of banks (Claim of Harold L. Chalifoux, SOV-43052, Decision SOV-640 in said Report at pp. 194-199).

4. When the defendant Russo-Asiatic Bank removed the original case from the New York Supreme Court to the United States District Court for the Eastern District of New York, two jury trials were held there, both of which were decided in favor of Tillman. On the last trial, the jury gave Tillman a verdict of $172,566.60, which the District Court sustained by denying a motion to vacate it. All proceedings in the District Court were set aside, when the case was remanded for lack of jurisdiction to the New York Supreme Court on the mandate of the United States Circuit Court of Appeals for the Second Circuit.

The judgment of Tillman in the New York Supreme Court was not entered automatically, but by the Court rendering judgment "after proof of the cause of action set forth in the complaint", the examination on oath of the plaintiff "respecting any payments to the plaintiff or to anyone for his use on account of his demand", proof by affidavit "that a warrant of attachment granted in the action has been levied on the property of the defendant, containing a description of the property so attached, with

the statement of the value thereof" and submission of proof that the service of process is complete and that the defendant defaulted (New York Civil Practice Rule 192, App. pp. 54-55). Accordingly, extensive documentary and oral proof by affidavits of many witnesses was presented to the Court by Tillman, and accepted as satisfactory by the justice thereof.

5. Between 1927 and 1935 there were many decisions handed down by the Federal and New York State courts in *Tillman* v. *Russo-Asiatic Bank*, in which the bank was represented by Evarts, Choate & Leon. When the Court of Appeals of New York held their appearance unauthorized (*Issaia* v. *Russo-Asiatic Bank*, 266 N. Y. 37) under Full Faith and Credit Clause of the Constitution and under the law of New York all these decisions became nullities without being formally vacated. See in New York (*Vilas, et al.* v. *Plattsburgh & M. R. Co. et al.*, 123 N. Y. 440, 455; *Ferguson* v. *Crawford*, 70 N. Y. 253, 269; *Kerr* v. *Kerr*, 41 N. Y. 272, 278) and in Federal courts (*Hall* v. *Lansing*, 91 U. S. 160, 165; *Thompson* v. *Whitman*, 18 Wall. 457, 464; *Barnes* v. *Kinney*, 162 Fed. Supp. 85). The Government attempted to rely on these annulled cases, but they were ignored in the opinion of the Court of Claims.

6. The Government also attempted to rely on a *dictum* of the District Court concerning the Tillman attachment in *Steingut* v. *Guaranty Trust Co.*, 58 Fed. Supp. 623, an equity action, to which the Government was *not* a party, tried, *but not consolidated with*, *United States* v. *Guaranty Trust Co.*, 68 Fed. Supp. 623, 161 Fed. (2) 571, cert. den. 332 U. S. 807, an action at law to which Tillman was not a party. So, the *dictum* is not binding between the petitioner and the Government (*U. S.* v. *Pink*, 315 U. S. 203, 216).

Nine years later, in 1953, the New York Supreme Court directed Steingut, the receiver of New York assets of

Russo-Asiatic Bank, to pay to petitioner $10,000 as her proportionate part of said assets due on her *valid attachment*. Under the Full Faith and Credit Clause of the Constitution, Tillman's judgment in the Federal court has the same effect "as they have by law and usage in the courts of the State from which they are taken" (Act of May 26, 1790, c. 11, 1 Stat. 122, as amended 28 U. S. C., sec. 687).

The District Court also had no jurisdiction to review on the merits the New York State judgment (*Titus* v. *Wallick*, 306 U. S. 282; *Cooper* v. *Reynolds*, 10 Wall. 308; *Fox* v. *MacGrath*, 152 Fed. (2) 616). The Court of Claims in its opinion ignored these cases.

7. The Court of Claims recited in its opinion the decision in *Tillman* v. *National City Bank & Guaranty Trust Co.*, 276 N. Y. 663, made in 1938. We have shown above that the New York Supreme Court in 1953 did not find that it barred petitioner's attachment claim against Russo-Asiatic Bank (Petition, par. 10). This action dealt only with the additional statutory remedy (*Steingut* v. *Guaranty Trust Co.*, 58 Fed. Supp. 623, 642).

The denial of the statutory remedy at law, barred by six years' statute of limitations, did not affect plaintiff's lien nor her right to foreclose it by a bill in equity both under the New York State law (*House* v. *Carr*, 185 N. Y. 453, 458; *Hulbert* v. *Clark*, 128 N. Y. 295, 297-8) and the Federal law (*Hardin* v. *Boyd*, 118 U. S. 756; *Lewis* v. *Hawkins*, 23 Wall. 119; *Riordan* v. *Ferguson*, 147 Fed. (2) 983, 987-8).

8. Plaintiff's attachment lien remains in full force until her judgment is fully paid. Dormance does not destroy an attachment lien in New York (*Castriotis* v. *Guaranty Trust Co.*, 229 N. Y. 74; *Van Camp* v. *Searle*, 147 N. Y. 150,

160; *Mechanics & Traders Bank* v. *Dankin*, 51 N. Y. 519, 523; *McCarthy* v. *Farley*, 149 Misc. (N. Y.) 360, 361).

Speaking of the New York law regarding attachment levies, this Court said in *Zitman* v. *McGrath*, 341 U. S. 446 at page 450; upholding validity of a levy nine years old:

> "The levy does not require the sheriff to take physical possession of any property, nor does it require any transfer of title."

Under New York law, a warrant of attachment is not annulled by a judgment, but remains alive until dissolved by order of the court, or is paid (*Ackerman* v. *Tobin*, 22 F. (2) 541, 544).

Petitioner's execution of 1935 was "but a continuance of the attachment" of 1927 (*Thatcher* v. *Bancroft*, 15 Abb. Pr. (N. Y.) 243). Her warrant of 1927 was not affected by the intermediate orders vacating and reinstating it. (*Pach* v. *Gilbert*, 124 N. Y. 612, affirming 9 N. Y. Supp. 548 and 7 N. Y. Supp. 336; *Hetman* v. *Brenner*, 2 How. (N. Y.) 354, 357) (Petition, pars. 8-9).

9. On November 16, 1933, the President of the United States recognized conditionally the Soviet Government of Russia, and in this connection the so-called Litvinov Assignment was executed, by which the Soviet Government assigned to the United States all claims which the Soviet Government owned in the United States, preparatory to final settlement of the claims outstanding between the two Governments, and of the claims of their nationals. (*Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics*, Publication 528, Department of State, 1948 (Reprinted) (App. pp. 52-53). As the Soviet Government had theretofore nationalized the Russian banks, it owned or claimed to own deposits carried for the accounts

of such banks in the United States, including the deposits held in the Guaranty Trust Company and in the National City Bank of New York for the account of the Russo-Asiatic Bank.

One of the conditions of said recognition was that

> "The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above *not to make any claims with respect to:*
>
> "(a) *judgment* rendered *or that may be rendered by American courts in so far as they relate to property,* or rights, or interests therein, in which the Union *of* Soviet Socialist Republics or *its nationals* may have had or may claim to have an interest; * * *."

The assignment purported to "release and assign" to the Government of the United States "the amounts admitted to be due or that may be found to be due to it, as successor of prior Governments of Russia". Obviously, such amounts do not include property of a Soviet national in the United States covered by a judgment of American courts, such as petitioner's New York judgment, against the assets of Russo-Asiatic Bank in New York, as the Soviet Government disclaimed such claim, and, having no claim to such property, had nothing to assign to the Government of the United States.

On August 4, 1939, Congress adopted a Joint Resolution appointing a Commissioner for Soviet Claims in the Department of State (53 Stat. 1199), whose functions by the Reorganization Plan No. 1 of 1954 were transferred to the Claims Commission (App. p. 47). Subsequently, in accordance with the Litvinov Assignment, U. S. Government undertook to collect the various amounts so assigned to it,

including deposits for Russo-Asiatic Bank. In some instances, litigation was necessary. (*Steingut, et al.* v. *Guaranty Trust Company*, 58 F. Supp. 623, affirmed 161 F. (2d) 571; *First National City Bank of New York* v. *Gilliland*, 257 F. 2d 223, cert. den. 358 U. S. 837.) By 1955, the United States had collected approximately $9,000,000 under the Assignment, including, concededly, $4,368,000.00 of the funds of Russo-Asiatic Bank (App. p. 46), theretofore held on deposit with said New York banks, and placed the funds in the Treasury on special account.

Under Section 302 of the Public Law 285, approved August 9, 1955 (69 Stat. 571; 22 U. S. C. 1641a), a Soviet Claims Fund so-called was created in the Treasury for coverage into it of funds collected under the Assignment, and by Section 305 of that Public Law the above Commission was directed to receive and determine in accordance with substantive law, including applicable international law, for certification to the Treasury for payment, the validity and amounts of claims of American nationals against the Soviet fund. Two kinds of claims were to be considered, the first comprising claims against the Soviet Government arising prior to November 16, 1933, and the second, claims against Russian nationals whose property in the United States was theretofore attached or against which judgments were obtained by American citizens in American Courts (Petition, pars. 12, 13, 14 and 15).

10. On March 22, 1956, petitioner, as Administratrix, filed claim with respondent Commission for the sum of $200,497.20, predicated on rights derived from said attachment of August 22, 1927, and levy made thereunder on August 24, 1927 (App. p. 44), and also derived from said judgment and execution thereof upon the deposits with the Guaranty Trust Company and the First National City Bank of New York.

In subsequent hearings before the Commission, petitioner contended that in granting the judgment, the Supreme Court of New York had determined both the validity and amount of her claim, and that such determination was binding on the Commission and could not be split by it into the original causes of action under constitutional guarantees. However, the Commission held that Section 305(a)(1) of the Public Law 285, approved August 9, 1955 entitled it to review the proof and evidence submitted to the New York Supreme Court to obtain the attachment to determine how Tillman's underlying claims were acquired, and accordingly, on November 14, 1956, dismissed the claim on the ground that he failed to comply with the Commission's request and supply information as to the facts of causes of action on which his New York State judgment was based. In other words, the Commission never considered Tillman's claim on its merits.

On January 24, 1957, the Commission finally dismissed the Tillman claim based on the aforementioned attachment and judgment liens.

In rejecting the claim, the Commission purported to exercise powers with regard to Tillman's attachment and judgment liens, denied by the Constitution to the Commission and to any court by the Full Faith and Credit Clause (Article IV, Section I).

11. On October 13, 1958, the petitioner brought an action for declaratory judgment in the United States District Court for the District of Columbia, claiming that she was deprived of her property in the lien of her attachment and judgment granted by the New York Supreme Court on the funds of the Russo-Asiatic Bank with Guaranty Trust Co. in New York City seized by the Treasury Department without compensation to the petitioner and used to pay claims of private citizens against the Soviet Government. On motion of the Government claiming that

"Congress has provided a remedy at law for the taking of private property. 28 U. S. C. 1491". The District Court granted the motion, and dismissed the action for lack of jurisdiction without opinion, thereby holding that under said section 1491 the jurisdiction was in the United States Court of Claims. The order of the District Court was affirmed without argument on motion of the Government in the Court of Appeals for the District of Columbia without opinion. This Court denied applications for a writ of certiorari in 362 U. S. 903 and 957.

12. The Government in claiming in this action that the United States Court of Claims has no jurisdiction is adopting an inconsistent position in the same litigation, between the same parties and on the same cause of action. The Government is estopped to urge such a defense, as the petitioner in good faith accepted said Government's contention and has acted thereon by bringing this action in the Court of Claims. (*Sullivan* v. *Nitrate Producers SS. Co.*, 254 Fed. 361, affmd. 267 Fed. 371; *Rhodes* v. *Interlake Transportation Co.*, 144 Fed. 205; *Providence Washington Ins. Co.* v. *Morse*, 35 Fed. 363.)

13. The Court of Claims on the motion of the Government dismissed the petition holding in the opinion (App. pp. 40-47):

a) That the New York Supreme Court in granting to Tillman judgment on September 23, 1935, after the recognition of the Soviet Government by the Government of the United States, erred in dealing with the funds of Russo-Asiatic Bank in New York as its funds, as these were funds of the Soviet Government by virtue of Soviet nationalization of the Bank's assets in the Soviet Union, despite its waiver in the Litvinov Assignment.

b) That the jurisdiction of the New York Supreme Court *in rem* over the funds of Russo-Asiatic Bank in

New York in 1927 was retroactively divested by the Soviet nationalization decrees because of the recognition of Soviet Government by our Government on November 16, 1933.

c) That the United States under the Roosevelt-Litvinov assignment took assets of Soviet nationals in the United States free and clear of any pre-existing liens acquired by American citizens in the United States against assets of the Soviet nationals.

d) That the petitioner lost her property rights in said liens on the funds of the Russo-Asiatic Bank in New York City not because of the taking of said funds by the Treasury Department but because of the taking thereof by the Soviet Government under its nationalization decrees.

e) That after private property of an American citizen was seized by the United States Government without compensation, contrary to Amendment V of the Constitution, the Congress may pass a statute directing an administrative commission to allow or to deny compensation for all or a part of such property protected by a judgment of a state court, re-examine the merits of such state judgment and request the citizen to split the said judgment into the original causes of action contrary to the Full Faith and Credit Clause of the Constitution (Article IV), and foreclose to the citizen an access to the federal courts in defense of his constitutional rights.

f) The Court of Claims completely ignored the express waiver by the Soviet Government in said Roosevelt-Litvinov Assignment as to all of the property of Soviet nationals in the United States covered by any judgment of any American court.

14. Except for the construction of the waiver of Soviet Government as to the property of its nationals in the

United States subject to the judgments of American courts, which had never been considered and determined by this Court, all the above rulings of the Court of Claims were contrary to settled course of decisions on the same matters by this Court and several United States Circuit Court of Appeals, thereby creating confusion and instability in the applicable federal law, and depriving the petitioner of her only property now amounting to close of $450,000.

REASONS FOR GRANTING THE WRIT*

POINT I

This Court never considered nor construed the waiver by Soviet Government in the Litvinov Assignment of all rights to property of its nationals in the United States subject to judgments of American courts.

In negotiating for the recognition of Soviet Government, the Government of the United States knew of the constitutional division of governmental powers under the United States Constitution (Articles II and III). It knew that no executive agreement by the President with any foreign power may nullify a judgment of any American court in favor of a citizen in regard to property within the jurisdiction of such American court. It knew that even a treaty approved by the Senate yields to the commands of the Constitution (*Todok* v. *Union State Bank*, 281 U. S. 449, 454; *Prevost* v. *Greneaux*, 60 U. S. 1, 7). An international executive agreement has the same power as a congressional statute (*Rainey* v. *United States*, 232 U. S. 310, 316; *Horner* v. *United States*, 143 U. S. 570, 578). Neither may authorize that which the Constitution

* Italics are ours, unless otherwise indicated.

forbids (*Asakura* v. *Seattle*, 265 U. S. 232, 341; *Thomas* v. *Gay*, 169 U. S. 264, 271; *Geoffroy* v. *Riggs*, 133 U. S. 258, 264). Our Government knew that by Article IV of the Constitution judgments of American courts were entitled to full faith and credit in all the courts and all executive departments in the United States.

Hence, our Government decided only on a conditional recognition of the Soviet Government. Our Government knew of the nationalization of all private property in the Soviet Union and that some of the property of private Soviet nationals was subject to judgments granted to American citizens by American courts. Therefore, one of the conditions of Soviet recognition was the following waiver by the Soviet Government in the Litvinov Assignment:

> "The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claims with respect to:
>
> "(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest" (App. p. 53).

Conditions on a recognition of a foreign government are sanctioned by the international law and remain binding on the recognized state (*United States* v. *Pink*, 315 U. S. 203, 229).

Thus, Dr. Oppenheim, renowned professor of international law in Cambridge University, in his treatise on International Law, Volume I (1st ed.), pages 111 and 112, says:

> "Sec. 73. Since, however, the granting of recognition is a matter of policy, and not of law, nothing prevents

an old State from making the recognition of a new State dependent upon the latter fulfilling certain conditions. Thus the Powers assembled at the Berlin Congress recognized Bulgaria, Montenegro, Servia and Roumania under the condition only that these States did not impose any religious disabilities on any of their subjects. * * * . * * * *conditional recognition, if accepted by the new State, imposes the internationally legal duty upon such State to comply with the condition* * * *."*

And see also, Professor Hyde on conditional recognition (Vol. 1 of his International Law at p. 151).

The Court of Claims ignored the above waiver by the Soviet Government of all rights "to property * * * in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest" when such property related to "judgments * * * that may be rendered by American courts". Petitioner has such judgment. The Court of Claims in its opinion said:

> "The Act establishing this Commission (International Claims Commission) no more constitutes a taking of plaintiff's property than would an Act conferring jurisdiction on this court to determine such claims. The Litvinov Assignment did not constitute a taking of plaintiff's property because this did nothing more than assign to the United States whatever rights the Soviet Government acquired by virtue of its nationalization decrees. It was not the United States that took anything from plaintiff, but the Russian Government.
>
> Defendant's motion to dismiss is granted, and plaintiff's petition is dismissed" (App. pp. 46-47).

Thus, the Court of Claims held that the only title which the United States held to the Soviet assets in the United

States was that derived from the title of the Soviet Government transferred by Litvinov Assignment (Accord: *United States* v. *Pink*, 315 U. S. 203, 231). Since Soviet Government expressly disclaimed any interest in American assets of Soviet nationals related to any judgment of American courts, it had no title to pass to the United States Government for the New York funds of the Russo-Asiatic Bank subjected to petitioner's liens under her New York judgment of 1935.

Consequently, the seizure of these funds by the United States Government without any compensation to the petitioner constituted a denial of petitioner's constitutional guaranty in the Fifth Amendment. It was a further violation of said guaranty to apply said funds under the International Claims Settlement Act (64 Stat. 12) as amended (69 Stat. 572), 22 U. S. C., Sec. 1641 (a) and (b) (App. pp. 50-51) to the payment of claims of other private citizens against the Soviet Government (*Louisville Joint Stock Land Bank* v. *Rockford*, 295 U. S. 555, 601).

This Court on several occasions passed on the effect of Litvinov Assignment (*United States* v. *Pink*, 315 U. S. 203; *Guaranty Trust Co.* v. *United States*, 304 U. S. 126; *United States* v. *Belmont*, 301 U. S. 324) *but never on that part thereof that concerned the Soviet waiver regarding property of its nationals covered by American judgments.*

The ruling on this point by the Court of Claims is directly against the ruling of the United States Circuit Court of Appeals for the Second Circuit in *State of Russia* v. *National City Bank*, 69 Fed. (2) 44, where the Court said that by Litvinov Assignment, Soviet Government "agreed to leave undisturbed diplomatically final non-appealable judgments and decrees of the American courts touching Russian affairs * * *. This, we think, was the intention on the part of the governments as stated in the exchange of correspondence" (p. 48).

In passing the Act of August 9, 1955 (69 Stat. 562), Congress did not manifest any intention of altering the jurisdiction of the Court of Claims. That jurisdiction "applies only to claims made directly against the United States, and for the payment of which they were primarily liable, if liable at all, and not to claims against other governments, the payment of which the United States had assumed or might assume by treaty" (*Ex parte Atocha*, 17 Wall. 439, 444).

The petitioner had valid liens sustained by a final New York judgment. The liens were property (*In re Pennsylvania Central Brewing Co.*, 114 Fed. (2) 1010, cert. den. 312 U. S. 685; *Britton* v. *Western Iowa Co.*, 9 Fed. (2) 488; *In re Lexington Appliance Co.*, 135 Fed. Supp. 235). The Government took the funds of the Russo-Asiatic Bank in New York burdened with these liens of the petitioner without paying any compensation to her, thereby giving the petitioner a direct claim against the United States under the Fifth Amendment to the Constitution. It was a confiscation of the property of an American citizen in the United States for which the Government became primarily liable to the petitioner, despite an attempt to legalize such confiscation by the said Act of August 9, 1955.

The claim of the petitioner is based on the direct violation by the United States of said petitioner's constitutional guaranty. The fact that the United States bases such violation on an executive agreement with the Soviet Russia is completely immaterial. The petitioner claims nothing under the Litvinov Assignment. That the defense of the United States may invoke an international treaty does not affect the jurisdiction of the Court of Claims.

POINT II

The ruling of the Court of Claims that Soviet nationalization decrees affected retroactively petitioner's liens was contrary to the decisions of this Court and of many U. S. Courts of Appeal.

The Court of Claims said in its opinion:

> "This is the end of the matter if the funds of the Russo-Asiatic Bank in this country passed into the hands of the Russian Government, by virtue of the decree of December 27, 1917, nationalizing all banks in Russia prior to the Litvinov Assignment.
>
> In the case of *United States* v. *Pink*, 315 U. S. 203 (1942), it was held that by virtue of the nationalization decrees of the Russian Government, the balance of the assets of a New York branch of a Russian insurance corporation became vested in the Russian Government, and that the rights of the Russian Government therein passed to the United States under the Litvinov Assignment. The principle of that case governs here. The funds of the Russo-Asiatic Bank, therefore, were covered by the Litvinov Assignment * * *.
>
> This is true because our recognition of the Union of Soviet Socialist Republics on November 16, 1933, dated back to the inception of that Government on December 27, 1917, and validated all actions and conduct of the Government so recognized from the beginning of its existence. *United States* v. *Belmont*, 301 U. S. 324 (1937), and *United States* v. *Pink*, *supra*" (App. at pp. 45-46).

If as we have shown under the previous point, the funds of Russo-Asiatic Bank in New York attached by Tillman did not pass to the United States under the Litvinov Assignment, the above ruling is clearly erroneous.

The Court of Claims misconstrued and misapplied the decision of this Court in *United States* v. *Pink*, 315 U. S. 203, where Mr. Justice Douglas speaking for the majority said at pages 227 and 228:

> "The contest here is between the United States and creditors of the Russian corporation, who, we assume, *are not citizens of this country* and whose claims did not arise out of transactions with the New York branch * * *.
>
> A State is not precluded, however, by the Fourteenth Amendment from according priority *to local creditors* as against creditors who are nationals of foreign countries and whose claims arose abroad. *Disconto Gesellschaft* v. *Umbreit*, 208 U. S. 570 * * *.
>
> There is no reason why it (the Federal government) may not through such devices as the Litvinov Assignment, make itself and its nationals whole from assets here *before it permits such assets to go abroad in satisfaction of claims of aliens made elsewhere* and not incurred in connection with business conducted in this country."

Mr. Justice Frankfurter in a concurring opinion said at page 237:

> "In the immediate case the United States sues, in effect as the assignee of the Russian Government *for claims by that government against the Russian Insurance Company* for monies on deposit in New York *to which no American citizen makes claim.*"

Tillman is such American citizen, whose rights the Court of Claims asserted are affected by the alleged effect of Soviet nationalization decrees in the United States under the Litvinov Assignment. When such rights of American citizens were involved in *Guaranty Trust Co.* v. *United*

States, 304 U. S. 126, this Court said at pages 140, 141, 142 and 143:

> "The very purpose of the recognition by our government is that our nationals may be conclusively advised with what government they may safely carry on business transactions and who its representatives are. *If those transactions, valid when entered into, were to be disregarded after the later recognition of a successor government, recognition would be an idle ceremony, yielding none of the advantages of established diplomatic relations in enabling business transactions to proceed, and affording no protection to our own nationals in carrying them on* • • •.
>
> • • • The proof demonstrates that *the United States never acquired a right free of a pre-existing infirmity*, the running of limitations against its assignor, which public policy does not forbid • • •.
>
> *The assignment left unaffected the right of petitioner to set up against the United States the previous running of the statute of limitations.*"

The ruling of the Court of Claims is also contrary to the ruling of this Court in *United States* v. *Belmont*, 301 U. S. 324, where this Court said at page 332:

> "SECOND: The public policy of the United States relied upon as a bar to the action is that declared by the Constitution, namely, that private property shall not be taken without just compensation • • •. So far as the record shows, only the rights of the Russian corporation have been affected by what has been done; *and it will be time enough to consider the rights of our nationals when, if ever, by proper judicial proceeding, it shall be made to appear that they are so affected as to entitle them to judicial relief.*"

In *Koninklijke Lederfabrick* v. *Chase National Bank*, 177 Misc. (N. Y.) 186, 30 Supp. (2) 518, affirmed 263 App.

D. v. 815, six judges of the New York Supreme Court held at page 193:

> "Recognition does not undo the legal consequences of previous recognitions, and if plaintiff here recovers a judgment based upon our government's present recognition of the Netherlands Government now functioning in London, that judgment will be conclusive as against a claim based upon later recognition of a successor Government. *Guaranty Trust Co.* v. *United States*, 304 U. S. 126, 140-1."

It is directly contrary to the rulings of the United States Circuit Court of Appeals for the Second Circuit in *Lehigh Valley R. R. Co.* v. *State of Russia*, 21 Fed. (2) 396, 401-2 and in *Banco de Espana* v. *Federal Reserve Bank*, 114 Fed. (2) 438, 444.

In an attachment action *in rem* jurisdiction attaches on commencement of the action. (*Kline* v. *Burn Construction Co.*, 260 U. S. 226; *Tribbel* v. *Henderson*, 151 Fla. 712, 10 So. (2) 734, affirmed 153 Fla. 397; 14 So. (2) 809.)

The liens are governed solely by the state law (*Metcalf Bros. & Co.* v. *Barker*, 187 U. S. 165). In 1927 the confiscation of Russian assets by the Soviet decrees was not recognized either by the Federal (*Second Russian Ins. Co.* v. *Miller*, 268 U. S. 552; *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481; *The Penza*, 277 Fed. 71; *The Rogdai*, 278 Fed. 298), or by the New York State Courts (*Vladikavkasky Ry. Co.* v. *New York Trust Co.*, 263 N. Y. 369; *Sokoloff* v. *National City Bank*, 239 N. Y. 158; *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N. Y. 23). Hence, the Supreme Court of New York in Tillman's action in 1927 obtained valid jurisdiction under then existing law over New York assets of the Russo-Asiatic Bank.

It is settled law that where the jurisdiction of a court is once lawfully acquired under the existing law, it is not divested by a subsequent change of law or of the newly

occurring facts. *Highway Const. Co.* v. *McClelland*, 15 Fed. (2d) 187, cert. den. 293 U. S. 765; *O'Connor* v. *Rhodes*, 79 Fed. (2d) 146, aff'd 297 U. S. 383; *Schmitt* v. *Lamb*, 48 Fed. (2d) 533, aff'd 285 U. S. 222; *O'Connor* v. *Stanley*, 54 Fed. (2d) 20.

The attachment in New York is a purely statutory remedy entirely governed by statute. Transfer of title after levy of attachment does not affect the attachment or the levy (*Anthony* v. *Wood*, 96 N. Y. 181, 185; *Dunlap* v. *Patterson Fire Ins. Co.*, 74 N. Y. 145, 152).

In New York an attachment action does not abate because of the death of the defendant (*Logan* v. *Greenwich Trust Co.*, 144 App. Div. 372, aff'd 203 N. Y. 611; *More* v. *Thayer*, 10 Bar. (N. Y.) 258; *Thatcher* v. *Bancroft*, 15 Abb. Pr. (N. Y.) 243.

Plaintiff's execution (Petition, Par. 6) was "but a continuance of the attachment" (*Thatcher* v. *Bancroft*, 15 Abb. Pr. (N. Y.) 243). The warrant was not affected by the intermediate orders vacating and reinstating it. In *Fielman* v. *Brunner*, 2 How. (N. Y.) 354, the plaintiff agreed to vacate the attachment in exchange for defendant's personal undertaking. Thereafter, the defendant became a bankrupt, and the question before the Court was, whether the plaintiff is entitled to collect the full amount under the attachment lien or the proportionate creditor's share under the undertaking. The General Term for the First Department in upholding the attachment said at page 357:

> "On the rendition of the judgment in favor of the creditor, the lien becomes absolute, *relating back to the time of the levy, and taking its priority from that date.*"
>
> Same *Pach* v. *Gilbert*, 124 N. Y. 612, affirming 9 N. Y. Supp. 548 and 7 at 336.

Thus, when the United States removed the funds of the Russo-Asiatic Bank from New York to the separate special

account with the Treasury in Washington, it took them burdened with plaintiff's attachment lien (*U. S.* v. *Belmont*, 301 U. S. 324, 332; *U. S.* v. *National City Bank*, 90 Fed. Supp. 448, 453) as of 1927, the date of levy, and not as of 1935, the date of the judgment and an execution thereon. The state order of July 13, 1935, was expressly a reinstatement of the attachment lien of Tillman *nunc pro tunc* as of 1927. There could be no collateral attack on it in this case, as the lien merged in the judgment. (*Lynch* v. *Crary*, 52 N. Y. 181). No collateral attack is valid (*Roller* v. *Murray*, 234 U. S. 738; *McNitt* v. *Turner*, 83 U. S. 352.)

The assignment of the confiscatory Soviet title to the United States, title excluding any consideration by the Soviet Union to the owner of confiscated property, did not make the United States a common law purchaser, and under the New York law did not vest the United States with a title superior to Tillman's attachment lien. (Section 7, subd. 4 of the New York Civil Practice Act (App. at p. 55); *Pach* v. *Gilbert*, 124 N. Y. 612, 619; *Milliken* v. *Fidelity & Deposit Co.*, 129 App. Div. (N. Y.) 206, 214; *Friede* v. *Weissenthaler*, 27 Misc. (N. Y.) 518-9.)

The transfer of funds of Russo-Asiatic Bank from New York to Washington did not affect petitioner's lien. In *Fischer-Hanson* v. *Brooklyn Heights R. R. Co.*, 173 N. Y. 492, the court unanimously said at pages 501-2:

> "Moreover, the general rule is that a lien upon property attaches to whatever the property is converted into and is not destroyed by changing the nature of the subject. Thus, a lien upon timber ordinarily extends to the shingles made out of it; a lien upon domestic animals to their young subsequently born, and a lien upon a mortgage to the land into which the mortgage is converted by foreclosure. It follows i s subject and cannot be shaken off by a change of form or substance."

The Court of Claims then continued in its opinion:

> "So that, at the time the attachment was issued, the funds that had belonged to the Russo-Asiatic Bank, and which were then in the Guaranty Trust Company and National City Bank, had become the funds of the Union of Soviet Socialist Republics by virtue of the nationalization decrees. Since the Soviet Government was not made a party to plaintiff's action in the Supreme Court of New York, if that could have been done in any event, the attachment issued against these funds was ineffective as against the right to them asserted by the Soviet Government, and the rights of the Soviet Government in them were assigned to the United States under the Litvinov Assignment. It results that the United States took those funds free of the lien of the attachment and judgment obtained by plaintiff" (App. at p. 46).

Existence of possible claim by another party does not affect judgment (*Titus* v. *Wallick*, 306 U. S. 282, 290; *Matter of Holden*, 271 N. Y. 212, 217).

Tillman had no duty under the New York statute to bring in as the parties the Soviet Government or the United States. The Soviet Government renounced all rights as to American judgments in the Roosevelt-Litvinov Agreement (see Point I, *supra*, at pp. 14-18). Even if the United States acquired any right to participate, the order of July 13, 1935, reinstated the Tillman case *nunc pro tunc* as of November 16, 1927, at which time the Russo-Asiatic Bank considered in New York as existing (before recognition), was fully served by publication and defaulted in appearance. Tillman, by his judgment *in rem*, had a perfect right to his liens against the whole world.

The New York statute expressly provides how, when and where such third parties as the Soviet Government and the United States in this case, should appear and protect

their interests. This is section 924 of the New York Civil Practice Act (App. pp. 55-58). It imposes no duties on the parties to the action. Unless such third parties proceed in the manner indicated in said Section 924, the Court cannot take any notice of them. (*Application of Diaz*, 192 Misc. 212; 80 N. Y. Supp. (2) 504.)

POINT III

The Court of Claims was denied by the Constitution the right to reexamine the merits of the decision of New York court granting judgment to petitioner sustaining her attachment lien.

Petitioner's judgment was granted *in rem* by the New York Supreme Court in 1935 after the recognition of Soviet Government. Whether it is technically a default (see *supra* at pp. 5-6) or an after trial judgment is immaterial as the Full Faith and Credit Clause of the Constitution (Article IV) equally applies (*Morris* v. *Jones*, 329 U. S. 545; *Treinies* v. *Sunshine Mining Corp.*, 308 U. S. 66; *Riehl* v. *Margolies*, 279 U. S. 218).

The application to the facts in the petitioner's case of the Litvinov Assignment and of the recognition of Soviet Government are matters affecting the decision of the New York court granting her judgment. Even if the federal court is convinced that the state court erred on the law in its decision granting judgment, it has no constitutional right to review it, but must give full faith and credit to the state judgment (*Cooper* v. *Reynolds*, 10 Wall. 308; *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430; *Milwaukee County* v. *White Co.*, 296 U. S. 268; *Roche* v. *McDonald*, 275 U. S. 449).

Thus, the review of the merits of the New York judgment by the Court of Claims was contrary to many decisions of this Court.

In *Morris* v. *Jones*, 329 U. S. 545, this Court said at page 552:

> "For the FULL FAITH AND CREDIT CLAUSE established throughout the federal system the salutary principle of the common law that a litigation once pursued to judgment shall be as conclusive of the rights of the parties in every other court as in that where the judgment was rendered. • • •
>
> In any event, the Missouri judgment is res judicata as to the nature and amount of petitioner's claim *as against all defenses which could have been raised*" (citing cases).

In *Titus* v. *Wallick*, 306 U. S. 282, this Court said at page 291:

> "So far as Ohio might apply a different rule, if the original cause of action were prosecuted in its courts, that fact is irrelevant to any issue here presented. The suit in Ohio was not upon the assigned cause of action but upon the judgment of which petitioner is the record owner. The suit upon it is upon a different cause of action from that merged in the judgment. Milwaukee County v. White Co., 296 U. S. 268, 275. It is the judgment and not the cause of action which gave rise to it for which credit is claimed, and the constitutional mandate requires credit to be given to a money judgment rendered on a civil cause of action in another state, *even though the forum would have been under no duty to entertain the suit on which the judgment was founded. Christmas* v. *Russell*, 5 Wall. 290; *Fauntleroy* v. *Lum*, 210 U. S. 230; *Roche* v. *McDonald*, 275 U. S. 449; *Milwaukee County* v. *White Co.*, supra, 277."

The assumption of the right to said review is also contrary to many decisions of the United States Courts of Appeal:

Consolidated Music Co. v. *Brunkerhoff Piano Co.*, 64 Fed. (2) 884 (Tenth Circuit);
Nelson v. *Miller*, 201 Fed. (2) 277 (Ninth Circuit);
Turner v. *Alton Banking & Trust Co.*, 181 Fed. (2) 899 (Eighth Circuit);
Fox v. *McGrath*, 152 Fed. (2) 616 (Second Circuit).

POINT IV

The Court of Claims construed the Act of August 9, 1955 contrary to many decisions of this Court and the Courts of Appeal holding that American citizens cannot be restricted by the Congress to administrative remedies for the violation of their constitutional guarantees and forbidden to seek redress of said violations in the federal courts.

The Court of Claims said in its opinion:

> "The International Claims Commission was the forum established by Congress for determination of the claims of our nationals against funds in this country formerly belonging to Russian nationals and nationalized by the Soviet Government. Congress, of course, had a right to confer jurisdiction for the determination of such claims on a commission, a court, or any other agency it might choose, and it had a right to make the decision of such a commission final and conclusive, thereby depriving the courts of any jurisdiction to review them. By virtue of that section it is plain that this court has no jurisdiction to entertain plaintiff's claim" (App. p. 45).

The Government seized without any compensation New York funds of the Russo-Asiatic Bank subject to the petitioner's liens adjudicated by the petitioner's judgment

granted by the New York Supreme Court. The petitioner's rights under Amendment V to the Constitution were clearly violated. We have shown that Litvinov Assignment conferred no title to these funds for the Government (Point I, *supra,* at pp. 14-18). The Court of Claims held that in 1955 the Government assisted by the Congress found a new and an easy method of rectifying Government's violations of constitutional guarantees to the American citizens by appointment of an administrative agency to consider the claims of citizens based on such violations and by prohibiting any review of the administrative decisions, whether they were or were not on the merits, or arbitrary, or contrary to the constitutional guarantees or otherwise untenable. We, of course, are here concerned only with the alleged interdiction in the Act of August 9, 1955 to American citizens to seek redress in the federal courts against violations by the Government of their constitutional guarantees.

This ruling of the Court of Claims is directly contrary to many decisions of this Court and of the Courts of Appeals.

As stated by Chief Justice Hughes in *St. Joseph Stockyards Co.* v. *U. S.*, 298 U. S. 38, at page 52:

> "Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority."

In *Estep* v. *United States*, 327 U. S. 114, this Court said at page 120:

> "And *except when the Constitution requires it*, judicial review of administrative action may be granted or withheld as Congress chooses."

In *Everlasting Development Corporation* v. *Descartes*, 95 Fed. Supp. 954, 192 F. (2) 1, cert. den. 342 U. S. 954, it was stated at page 959:

> "The question of whether it is within the power of a legislative body to circumvent judicial review in cases where an invasion of constitutional rights is asserted, has been the subject of exhaustive examination by the courts, and the decisions unanimously sustain the proposition that legislative bodies are without such power. *Estep* v. *U. S.*, 327 U. S. 114, 66 S. Ct. 423, 567; *Bridges* v. *Wimon*, 326 U. S. 135, 65 S. Ct. 1443, 2103; *Switchmen's Union of North America* v. *National Mediation Board*, 320 U. S. 297, 301, 64 S. Ct. 95; *Norton* v. *Cass County*, 5 Cir., 115 F. 2d 884, 886."

In *United States* v. *Butler*, 297 U. S. 1, this Court said at page 67:

> "Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law. Courts are reluctant to adjudge any statute in contravention of them. *But, under our frame of government, no other place is provided where the citizen may be heard to urge that the law fails to conform to the limits set upon the use of granted power.*"

Even with regard to the Act of August 9, 1955 the Court of Appeals for the District of Columbia speaking of section 4(h) now 314 thereof said in *De Vegvar* v. *Gillilland*, 228 Fed. (2) 640, at pages 642, 643:

> "No doubt the provisions of Section 4(h) do not bar certain types of judicial action, the Government brief, speaking of these provisions, says: • • • 'It is here assumed that, were this an area in which constitutional rights were or might be involved, Congress

could not prevent the vindication of such rights in a judicial tribunal.' * * *.'

No violation of constitutional right is suggested here; plaintiff-appellant makes no contention, for example, that the United States has taken her property without paying for it."

This is precisely the status of the petitioner herein.

In 1935 when the petitioner's judgment was obtained the Supreme Court of New York was bound in construing the Litvinov Assignment to accept the waiver of Soviet Government of any interest in the funds of Russo-Asiatic Bank in New York, because of Article VI of the United States Constitution that "all treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, * * *." The Act of 1955 did not exist then, and there is no basis of interpreting it retroactively.

Can Congress deprive Federal courts from interpreting treaties in view of Article III, section 2 of the Constitution which provides that "judicial power will extend to all cases, in Law and Equity, arising under * * * Treaties made, or which shall be made, under their (United States) Authority."

The answer is in the negative as the petitioner's claim involved the question of the ownership of the part of the fund held in 1955 by the Secretary of Treasury for distribution under Litvinov Assignment.

Mellon v. *Orinoco Iron Co.*, 266 U. S. 121;
Williams v. *Heard*, 140 U. S. 529, 539;
Z. & F. Assets Realization Corp. v. *Hull*, 114 Fed. (2) 467, 470, 473.

The International Claims Commission was and is an agency of the executive branch of the Government. Article

IV of the Constitution requiring full faith and credit to all judgments of American courts applies to the administrative agencies of the Government.

In *Chicago and Southern Airlines* v. *Waterman Steamship Corporation*, 333 U. S. 103, this Court stated at page 113:

> "Judgments, within the powers vested in Courts by the judiciary article of the Constitution, may not lawfully be revised, overturned *or refused faith and credit by another department of the Government.*"

The Commission asserted in effect that the Act of August 9, 1955 vested it with the power to recognize liens and judgments in full or in part, and that the determination of the Supreme Court of New York as to the extent and ownership of the liens to Tillman was not binding upon it, and demanded that petitioner present proof as to the origin of the claims underlying the liens and the judgment. Respondent declined to do so, relying on the Full Faith and Credit provisions of Section 1, Article IV of the Constitution. The latter requires full, untrammeled and unabridged credit for State judgments. *Davis* v. *Davis*, 305 U. S. 32, 39; *Haddock* v. *Haddock*, 201 U. S. 562.

In *Magnolia Petroleum Co.* v. *Hunt*, 320 U. S. 430, this Court said at page 444:

> "The whole tendency of our decisions under the Full Faith and Credit Clause is to require a plaintiff to try his whole cause of action and his whole case at one time. *He cannot split up his claim and 'a fortiori he cannot divide the grounds of recovery'. United States* v. *California & Oregon Land Co.*, 192 U. S. 355, 358."

While Congress may change contractual rights, it has no power to abrogate vested property liens (*In Re Lowman*, 79 Fed. (2d) 887, 890).

On the same principle the attempt of Congress (if it so intended) and of the Commission to modify the amount of petitioner's liens as fixed by the judgment of the New York Supreme Court was an attempt to exercise a power denied by the Constitution to the Executive Branch of the Government with regard to the final judgments of the Judicial Branch.

In *Lakelands* v. *Chippewa and Flambeau Improvement Co.*, 295 N. W. 919, 237 Wis., 326, the Supreme Court of Wisconsin adjudged the amount of land covered by a Federal grant registered in the U. S. Land Office. Thereafter, the defeated party asked the Land Office to resurvey the land subject to the grant. On such resurvey the U. S. Land Office eliminated about twenty (20) acres. The Court held that the resurvey was a nullity insofar as it sought to change the amount of land awarded by the judgment of the Missouri Court on the ground that its judgment could not be interfered with in any manner by any agency of the Executive Government, whether Federal or State.

In *Pacific Greyhound Mines* v. *Brooks*, 70 Ariz. 339, 220 P. (2) 477-479, an Arizona Court by a judgment fixed the route of a bus company. The decision was based on three permits of the State Highway Commission. Thereafter one of the parties to the judgment attempted to run a bus on a route forbidden to it on the ground that it held another permit which was not produced in the action. The Supreme Court of Arizona held that this additional permit of the State Highway Commission could have no effect in altering or revising the judgment of the Court, because it constituted an unconstitutional interference with the judicial power by an Executive Agency.

POINT V

The Court of Claims misconstrued Section 314 of the Act of August 9, 1955 as applying to petitioner's claim based on the New York judgment, which claim the International Claims Commission dismissed not on the merits but for refusal of petitioner to split said judgment into the original three causes of action.

We have considered in detail the question of the right of the International Claims Commission to defy the provision in Article IV of the Constitution relating to Full Faith and Credit to state judgments in the federal administrative agencies and the duty to accord to such judgments validity as a whole without splitting into original causes of action (Point IV, *supra*, at pp. 32-33). Here we confine ourselves to the construction of Section 314 of the Act of August 9, 1955 in so far as it is applicable to the refusal of the International Claims Commission to consider the claim of the petitioner on the merits, and its dismissal for refusal to split it into original causes of action.

In its opinion the Court of Claims said:

> "Section 314 of the International Claims Settlement Act of 1949, as amended, *supra* (22 U. S. C. § 1641m), provides:
>
> > SEC. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.
>
> Thus, section 314 expressly makes final and conclusive the action of the Commission 'on all questions of law

and fact', and expressly says that its action is 'not subject to review by any other official of the United States, or by any court by mandamus or otherwise.' * * *

The decision of the International Claims Commission was a valid and final adjudication of plaintiff's rights" (App. pp. 44-46).

The Court of Claims described the proceedings of the said Commission with regard to the petitioner's claim as follows:

> "Pursuant thereto, plaintiff filed a claim with the International Claims Commission, based upon the above mentioned default judgment. The Commission requested her to produce evidence of the origin of her claim, and the name of the person in whose favor the claim originally arose, and all subsequent owners and their nationality, and how and when the claim against the Bank arose. The plaintiff did not comply with the Commission's request; whereupon, she was notified that the Commission proposed to enter an adverse decision, to which proposed decision the plaintiff then filed objections. * * * On November 14, 1956, the Commission rendered its final decision affirming its proposed decision, * * *" (App. p. 44).

Thus, the Court of Claims found that the only claim that the petitioner filed with the Commission was that for the payment of petitioner's liens under her New York judgment, because the Congress vested the distribution of the funds of the Russo-Asiatic Bank burdened with her liens in the Commission.. The Commission dismissed the petitioner's claim for alleged failure to show that the original causes of action on which petitioner's said judgment was based were within the purview of the Act of August 9, 1955. In other words, the Commission held that petitioner's judgment was not "*any claim under this title*".

Consequently, petitioner's judgment claim was not within said section 314, and the holding by the Court of Claims that said section barred the petitioner for seeking enforcement of her New York judgment and the property rights secured thereby in any federal court is clearly unfounded.

Furthermore, section 314 makes "The action of the Commission in allowing or denying any claim • • • final and conclusive on all questions of law and fact". What questions of law and fact the Commission considered on petitioner's claim. Merely, refusal of the petitioner to base her claim on the original causes of action underlying her judgment and the nationality of original owners of said causes of action.

Is the petitioner in this action in the Court of Claims standing on her New York judgment or on the original causes of action underlying said judgment? Is the petitioner seeking in this action a mandamus to compel the Commission to consider her claim on the merits, or to vacate its order of dismissal? Did the petitioner ask the Court of Claims to review "any question of law and fact" involved in the order of dismissal of the Commission? Since the answer to all these questions is in the negative, the decision of the Court of Claims that the petitioner is barred to prosecute this action in said Court by the provisions of said section 314 is clearly erroneous.

In *Williams* v. *Heard*, 140 U. S. 529, this Court said in regard to Commissioners of Alabama Cl[illegible] at page 539:

> "Its function was performed when it rendered its judgment *on the merits* of the claims."

Our research failed to find any decision holding a dismissal of a claim by any Commission *not on the merits* as barring recourse by claimant to federal courts.

POINT VI

Writ of certiorari was allowed by this Court in cases involving similar issues.

This petitioner has important rights involving $450,000 dependent on the part of federal international agreement which this Court never considered, nor passed upon (Point I, *supra*, at pp. 14-18). Writ granted in *Kolóvrat* v. *Oregon*, 366 U. S. 187, 191.

The Court of Claims misconceived and misapplied the decision of this Court in *United States* v. *Pink*, 315 U. S. 203, limited to foreign contractual rights incurred abroad by aliens against a foreign corporation, by applying it to property rights of American citizen against assets of foreign corporation in New York State, subjected to liens created by New York judgment *in rem*. Writ granted in *Wilkinson* v. *United States*, 365 U. S. 399, 401; *Williams* v. *Georgia*, 349 U. S. 375, 380.

The rulings of the Court of Claims that the United States took Soviet nationalized assets in the United States by virtue of Litvinov Assignment free of pre-existing limitations in Soviet title is irreconcilable with the direct decision on this question by this Court in *Guaranty Trust Co.* v. *United States*, 304 U. S. 126. Writ allowed in *Wolfe* v. *United States*, 291 U. S. 712; *Funk* v. *United States*, 290 U. S. 371, 374.

The Court of Claims violated the prohibition of Full Faith and Credit clause to state judgments in the Constitution and rejected on the merits the petitioner's New York judgment, in direct conflict with the interpretation of the said clause in many decisions of this Court (Point III, *supra*, at pp. 26-28). Writ allowed in *Brach* v. *Pfeifer Oil Transportation Co. Inc.*, 361 U. S. 129, 130; *Upshaw* v. *United States*, 335 U. S. 410, 412.

The rulings of the Court of Claims on the retroactive effect of Soviet nationalization decrees or the recognition

of the Soviet Government affecting rights accrued prior thereto to American citizens against property in the United States of Soviet nationals are in direct conflict with the decisions of this Court in *Guaranty Trust Co.* v. *United States*, 304 U. S. 126 and *United States* v. *Belmont*, 301 U. S. 324, and of many Circuit Courts of Appeals (Point II, *supra*, at pp. 19-26). Writ allowed in *McCandless* v. *Furlaud*, 296 U. S. 140, 156; *Federal Communications Commission* v. *Broadcasting Service Organization*, 337 U. S. 901.

The Court of Claims sustained the constitutionality of section 314 of the International Claims Settlement Act of 1949 (64 Stat. 12) as amended in 1955 (69 Stat. 572), now 22 U. S. C., sec. 1641m, by unwarranted construction that it deprived an American citizen, whose rights under Article IV and Amendment V of the Constitution were violated by the Government, of the right to seek a redress for such violations in the federal courts (Point IV, *supra*, at pp. 28-33). Writ allowed in *United States* v. *Butler*, 297 U. S. 1, 61.

We apologize for the length of the petition, but this litigation continued since 1927 in several courts, and to forestall confusion and surprise claims as to facts and law for which there is no basis whatsoever, we decided to present fully the matters here involved.

WHEREFORE, your petitioner respectfully prays that her petition for a writ of certiorari to the United States Court of Claims be granted and the said writ be issued to the said Court.

LENA S. TILLMAN;
Petitioner.

Respectfully submitted,

BORRIS M. KOMAR,
Counsel for Petitioner,
349 East 49th Street,
New York 17, N. Y.,
MU 8—3521.

CITY, COUNTY AND STATE OF NEW YORK, ss.:

LENA S. TILLMAN, being duly sworn, deposes and says:

That she is the above named petitioner; that she has read the foregoing petition and that the statements therein are true to her own knowledge.

LENA S. TILLMAN.

Sworn to before me this
27th day of January, 1964.

WILLIAM H. LEFKOWITZ,
Notary Public,
State of New York.
Qualified in New York County.
No. 31-7475200.
Commission expires March 30, 1964.
(Notarial seal)

APPENDIX

Opinion of the Court of Claims.

IN THE

UNITED STATES COURT OF CLAIMS

No. 301-61

(Decided July 12, 1963)

LENA S. TILLMAN, *et al.*,

v.

THE UNITED STATES.

John J. Pyne for plaintiff. *Frost & Towers* and *Borris M. Komar* were on the brief.

Edward L. Metzler, with whom was *Assistant Attorney General John W. Douglas*, for defendant.

Before JONES, *Chief Judge*, WHITAKER, LARAMORE and DURFEE *Judges*.

ON DEFENDANT'S MOTION TO DISMISS PETITION OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

WHITAKER, *Judge*, delivered the opinion of the court:

In her petition plaintiff has alleged that the United States, acting in accordance with an Act of Congress, which plaintiff alleges is unconstitutional, has taken her property in violation of the Fifth Amendment to the Constitution, for which she is seeking a judgment against the

United States in the amount of $200,675.05, with interest. The case is before the court on defendant's motion to dismiss the petition, or, in the alternative, for summary judgment. The motion is grounded on ten defenses, as stated in defendant's brief, the first of which is that "the court lacks jurisdiction to entertain the suit or enter judgment against the United States."

Plaintiff's decedent, it is alleged, had some 114,000 Russian rubles on deposit in the Russo-Asiatic Bank in Petrograd, Russia. He was also the endorsee or assignee of a draft of the Bank drawn in 1919 for 100,000 rubles directed to a Russian office of the Bank, but the office to which it was directed could not be found. On September 18, 1918, he drew a check for 72,000 rubles on his account in the Bank. The check was dishonored. Then, on August 22, 1927, he brought an action in the Supreme Court of the State of New York against the Bank for the amount of the check and the amount of the draft. He obtained service by levying an attachment on funds originally deposited by the Bank in the Guaranty Trust Company and the National City Bank, both of New York City. Later, this action was removed to the United States District Court for the Eastern District of New York.

On June 26, 1928, that court entered an order vacating the attachment, upon the representation of the law firm of Evarts, Choate, Sherman & Leon, of New York, that they represented the Bank and would accept service for it and enter their appearance in the action, thereby rendering the attachment unnecessary. Plaintiff's attorney consented thereto, upon the faith of said representations. Later, after the case had been remanded to the Supreme Court of the State of New York, the Russo-Asiatic Bank obtained an *ex parte* order in that court, vacating the August 22, 1927 attachment and all liens thereunder (as of June 26, 1928), said order being later affirmed by the New York Court of Appeals.

Appendix.

After the Court of Appeals of New York, in the case of *Issai* v. *Russo-Asiatic Bank, et al.*, 266 N. Y. 37, 193 N. E. 543 (1934), had decided that the law firm of Evarts, Choate, Sherman & Leon had no authority to appear for the Bank in an action involving assets of the Bank in the State of New York (their appointment by French and Chinese liquidators of the Bank having no extraterritorial effect), plaintiff brought an action in the Supreme Court of the State of New York to set aside the former order vacating the attachment. The Supreme Court of the State of New York did set it aside *nunc pro tunc* as of November 26, 1927. This order was entered on July 13, 1935. Subsequently, on December 23, 1935, the Supreme Court entered a default judgment against the Bank for $210,675.05.

Plaintiff then brought an action under section 913 of the Civil Practice Act of New York seeking to reduce to possession the property attached. However, the court held that this remedy was barred by the statute of limitations, and this holding was affirmed by the Court of Appeals of New York in *Tillman* v. *National City Bank & Guaranty Trust Co.*, 276 N. Y. 663, 13 N. E. 2d 52 (1938).

In the meantime, this Government had entered into an agreement with the Union of Soviet Socialist Republics, known as the "Litvinov Assignment", under which this Government recognized the Union of Soviet Socialist Republics as the lawful Government of Russia, and under which that Government assigned to the United States all of its assets and the assets of its nationals located in the United States, for the benefit of American nationals who had claims against the Union of Soviet Socialist Republics or its nationals.

Following this, Congress, by the International Claims Settlement Act of 1949, 64 Stat. 12, as amended, 22 U. S. C. §§ 1621-1627 (1958), established the International Claims Commission, in the Department of State. Section 305 (a)

and (b) of the Act, added by 69 Stat. 572 (1955), 22 U. S. C. § 1641d (a) and (b) (1958) provides, in part:

> SEC. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—
>
> (1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and
>
> (2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.
>
> (b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

Pursuant thereto, plaintiff filed a claim with the International Claims Commission, based upon the above mentioned default judgment. The Commission requested her to produce evidence of the origin of her claim, and the name of the person in whose favor the claim originally arose, and all subsequent owners and their nationality, and how and when the claim against the Bank arose. The plaintiff did not comply with the Commission's request; whereupon, she was notified that the Commission proposed to enter an adverse decision, to which proposed decision the plaintiff then filed objections. After the hearing, the Commission, on October 9, 1956, issued an order stating that it would affirm its proposed decision unless the claimant within ten days established that the claim originally arose, in whole or in part, in favor of a national of the United States, and that a valid attachment lien was obtained prior to November 16, 1933, the date of the Litvinov Assignment. On November 14, 1956, the Commission rendered its final decision affirming its proposed decision, on the ground that the claimant had failed to establish the statutory prerequisites as provided in section 305 of the Act, for the determination of "claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States * * *."

Section 314 of the International Claims Settlement Act of 1949, as amended, *supra* (22 U. S. C. § 1641m), provides:

> SEC. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United

> States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

Thus, section 314 expressly makes final and conclusive the action of the Commission "on all questions of law and fact", and expressly says that its action is "not subject to review by any other official of the United States, or by any court by mandamus or otherwise." The International Claims Commission was the forum established by Congress for determination of the claims of our nationals against funds in this country formerly belonging to Russian nationals and nationalized by the Soviet Government. Congress, of course, had a right to confer jurisdiction for the determination of such claims on a commission, a court, or any other agency it might choose, and it had a right to make the decision of such a commission final and conclusive, thereby depriving the courts of any jurisdiction to review them. By virtue of that section it is plain that this court has no jurisdiction to entertain plaintiff's claim.

This is the end of the matter if the funds of the Russo-Asiatic Bank in this country passed into the hands of the Russian Government, by virtue of the decree of December 27, 1917 nationalizing all banks in Russia prior to the Litvinov Assignment..

In the case of *United States* v. *Pink*, 315 U. S. 203 (1942), it was held that by virtue of the nationalization decrees of the Russian Government, the balance of the assets of a New York branch of a Russian insurance corporation became vested in the Russian Government, and that the rights of the Russian Government therein passed to the United States under the Litvinov Assignment. The principle of that case governs here. The funds of the Russo-Asiatic Bank, therefore, were covered by the Litvinov Assignment.

This claim came into the hands of the United States free of the lien of attachment secured by plaintiff in 1927 against the alleged funds of the Russo-Asiatic Bank in the Guaranty Trust Company and the National City Bank, and also free of the lien of the default judgment entered on December 23, 1935 by the Supreme Court of New York. This is true because our recognition of the Union of Soviet Socialist Republics on November 16, 1933, dated back to the inception of that Government on December 27, 1917, and validated all actions and conduct of the Government so recognized from the beginning of its existence. *United States* v. *Belmont,* 301 U. S. 324 (1937), and *United States* v. *Pink, supra.*

So that, at the time the attachment was issued, the funds that had belonged to the Russo-Asiatic Bank, and which were then in the Guaranty Trust Company and National City Bank, had become the funds of the Union of Soviet Socialist Republics by virtue of the nationalization decrees. Since the Soviet Government was not made a party to plaintiff's action in the Supreme Court of New York, if that could have been done in any event, the attachment issued against these funds was ineffective as against the right to them asserted by the Soviet Government, and the rights of the Soviet Government in them were assigned to the United States under the Litvinov Assignment. It results that the United States took those funds free of the lien of the attachment and judgment obtained by plaintiff.

The decision of the International Claims Commission was a valid and final adjudication of plaintiff's rights. The Act establishing this Commission no more constitutes a taking of plaintiff's property than would an Act conferring jurisdiction on this court to determine such claims. The Litvinov Assignment did not constitute a taking of plaintiff's property because this did nothing more than assign to the United States whatever rights the Soviet

Government acquired by virtue of its nationalization decrees. It was not the United States that took anything from plaintiff, but the Russian Government."

Defendant's motion to dismiss is granted, and plaintiff's petition is dismissed.

DAVIS, *Judge*, did not participate in the consideration and decision of this case.

"International Claims Settlement Act of 1949.
[Act of March 10, 1950, c. 54, 64 Stat. 12, 22 U. S. C. § 1621, et seq.]

AN ACT

To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'International Claims Settlement Act of 1949' ".

* * * * *

SOVIET CLAIMS ACT

"Public Law 285—84th Congress

Chapter 645—1st Session

[Act of March 10, 1950, c. 54, 64 Stat. 12, U.S.C. § 1621, et seq. as amended by the Act of August 9, 1955, c. 645, 69 Stat. 572, 22 U.S.C. § 1641, et seq.]

To amend the International Claims Settlement Act of 1949, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the International Claims Settlement Act of 1949, as amended, is further amended by inserting after the first section thereof the following: 'TITLE I'.

SEC. 2. The word 'Act', wherever it appears in title I in reference to the International Claims Settlement Act of 1949, is amended to read 'title'.

SEC. 3. The International Claims Settlement Act of 1949, as amended, is further amended by adding at the end thereof the following:

'TITLE II'

'VESTING AND LIQUIDATION OF BULGARIAN, HUNGARIAN, AND RUMANIAN PROPERTY

'[The text of Title II is omitted]

'TITLE III

'CLAIMS AGAINST BULGARIA, HUNGARY, RUMANIA, ITALY, AND THE SOVIET UNION

'SEC. 301. As used in this title the term—

* * * * *

'(2) "National of the United States" means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

* * * * *

'(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

'(6) "Litvinov Assignment" means (A) the communication dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated Novembe 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November 15, 1933, assigning certain assets to the Government of the United States.

'(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances, or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

'(8) "Commission means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

'(9) "Property" means any property, right, or interest.

'Sec. 302. • • • The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litvinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders

certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury.

* * * * *

'Sec. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

'(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment, nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

'(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

'(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination,

under paragraph (1) of subsection (a) of this section, of any issu which was determined by the court in which the judgment was entered.

'(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

* * * * *

'Sec. 310. (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

'(1) Payment in full of the principal amount of each award made pursuant to section 305 (a) (1) and each award of $1,000 or less made pursuant to section 303 or 304;

* * * * *

'(3) Payment in the amount of $1,000 on account of the principal of each award of more than $1,000 in amount made pursuant to section 303, 304, or 305 (a) (2);

'(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

'(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of accrued interest on such awards as bear interest.

* * * * *

'Sec. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.' "

2. Litvinov Assignment of November 16, 1933

The Litvinov Assignment* was in the form of a letter, dated November 16, 1933, to the President of the United States from Maxim Litvinov, People's Commissar for Foreign Affairs, reading as follows:

"Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nations, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and

* See Establishment of Diplomatic Relations with the Union of Soviet Socialist Republics, Dept. of State, Eastern European Series, No. 1 (1933) for the various documents pertaining to recognition.

will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

"The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

"(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

"(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof."

This letter was acknowledged by the President on the same date, November 16, 1933. The acknowledgment, after setting forth the terms of the assignment, concluded:

"I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet."

192. Proceedings on application for default judgment if service [2]made otherwise than personally within the state or otherwise than by substituted service, and the defendant has not appeared.[3]

The following regulations shall apply to an application to a court, or to a judge thereof, for the judgment demanded in a complaint if the summons was served on the defendant [2]otherwise than personally within the state or by substituted service, and the defendant has not appeared.[4]

1. On such an application, the plaintiff must file proof that the service is complete, and proof by affidavit of the defendant's default.

2. In an action for a sum of money only, specified in the civil practice act, if the defendant is a nonresident or a foreign corporation, the plaintiff must produce and file proof by affidavit that a warrant of attachment granted in the action has been levied on the property of the defendant, containing a description of the property so attached, with a statement of the value thereof according to the inventory.

3. The court or judge must require proof of the cause of action set forth in the complaint to be made, either before the court or judge, or before a referee appointed for that purpose, [1]and, with or without a jury, may make a computation or assessment or take an account or proof of a fact, or direct a reference or[1] a writ of inquiry [2]in the manner prescribed in section four hundred ninety of[2] the civil practice act.

4. If the defendant be a nonresident, or a foreign corporation, the court or judge to whom such application is

made must require the plaintiff or his agent or attorney to be examined on oath respecting any payments to the plaintiff or to any one for his use on account of his demand, and must render the judgment to which the plaintiff is entitled.

New York Civil Practice Act.

7. General definition and rules of construction.

4. A warrant of attachment against property is said to be "annulled" when the action for which it was granted abates or is discontinued; or a final judgment rendered therein in favor of the plaintiff is fully paid; or a final judgment is rendered therein in favor of the defendant.

924. Claim to property by third person.

1. If personal property, other than a vessel, attached, seized or levied upon, as the property of the defendant, is claimed by or on behalf of another person, as his property, at any time after levy thereon and prior to the time when such property or the proceeds thereof, in case the property shall have been sold, have been applied in satisfaction, or partial satisfaction of a judgment obtained in the said action in which the warrant of attachment was issued, the said person claiming the property may apply on affidavit in the action in which the said property was attached, seized or levied upon, for an order directing the sheriff to deliver the property to him, if in his possession, or release such property from attachment, if not in his possession, unless the plaintiff give to the sheriff indemnity against said claim. The affidavit accompanying said application shall specify in whole or in part the property to which it relates, and in all cases state the value of the property claimed and the damages, if any, over and above such value, which the claimant

will suffer in case such attachment, seizure or levy is not released. The application must be made on at least five days' notice to the sheriff and to the plaintiff, and to the defendant if he has appeared in the action. The judge hearing the application shall, at the request of plaintiff fix the amount of indemnity to be furnished by him to the sheriff, and if no request is made by the plaintiff to furnish indemnity and it shall appear to the satisfaction of the court that there is reason to believe the claimant is entitled to the said property attached, seized or levied upon, the court must grant the application by the said third party for the delivery of the property to him unless the plaintiff shows such facts as may be deemed by the court sufficient to entitle him to a hearing to try the title to the said property. An order as herein provided, directing, the sheriff to deliver the property to the claimant if it be in the sheriff's possession, or releasing the property from attachment if not within the sheriff's possession, shall relieve the sheriff or any person holding the said property so released, or any part thereof, levied upon subject to the warrant, from any liability to the plaintiff by reason of so doing.

In the event the court shall direct that title to the said property be tried; it shall fix the date and place for hearing thereon and shall specify to whom notice shall be given and direct the method in which said notice shall be given. The court or judge before whom the hearing shall be held shall determine the title of the claimant in the property attached, seized or levied upon, or so much thereof to which claim has been made by the said claimant, and any party thereto may within five days after service of the order directing that title to the property be tried, with notice of entry thereof, may demand a jury. The party so demanding the jury shall advance the costs and expenses thereof which shall be fixed by the

judge hearing the proceeding. If, by such proceeding it is determined that the property belongs to the claimant, it shall be delivered to him by the sheriff if in the sheriff's possession, and if not in his possession, shall be released from the levy and the sheriff shall by such determination, and any person holding the said property or any part thereof, be released thereby, from all claim for damages to the plaintiff. If by such proceeding it is determined that the attachment, seizure, levy or sale was valid, the sheriff shall proceed thereunder and the sheriff and any person holding the said property shall be released from all liability to the claimant by such determination.

A plaintiff who has specified particular personal property to be attached as the property of the defendant, pursuant to section nine hundred and ten, shall be liable in an action to the true owner thereof, if other than the defendant, for any damage sustained by him by reason of the attachment, seizure of, or levy upon said property as that of the defendant, notwithstanding an order, decision or judgment hereunder directing that the sheriff deliver the property to the claimant or to release the same from levy or otherwise, nor shall any such order, decision or judgment affect in any manner the right, if any, of the defendant in the attachment action in or to the property discharged from the attachment, nor shall this section be construed as affecting or impairing any other right or remedy which any person might otherwise have in respect to the property attached.

Within five days after the entry of the order in such proceeding, any party thereto, upon notice to the other party or parties, may apply to the court or judge for a stay, or may give an undertaking to stay further proceedings, pending appeal. Such undertaking shall be not less than twice the amount of the claimed value of the prop-

erty and damages. A person who shall falsely or fraudulently make a claim as prescribed herein may be punished as and for contempt of court and shall in addition, be liable to an action for the recovery of treble damages to the party injured thereby.

2. If any personal property attached, seized or levied upon is claimed by or on behalf of another person, as his property, at any time after an action or special proceeding has been commenced by the sheriff or by the sheriff and plaintiff jointly, to reduce to sheriff's actual custody the personal property capable of manual delivery or to collect, receive and enforce the debts, effects and things in action, as provided in this article, the claimant, in addition to any other rights which he may have, may intervene in any such action or proceeding then pending and assert therein his right, title or interest in or to the said property.